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ABSTRACT

Privileged Communications refers to that information which belongs to the student, is shared with the counselor, and may be released only upon authorization by the student involved. This document seeks to identify states which have a stated communications privilege for school students and counselors. The report, which has complete information from 47 states, lists contact persons in each state where additional data can be obtained. The respondents in each state were asked to provide information on existing statutes which relate to privileged communications, pending legislation or legislation which did not pass a state legislature during past sessions. As a result of this report, the American School Counselor Association's Governmental Relations Committee is preparing "How To" workshops which will show legislation leaders how to put a privileged communication's legislative package together. (Author/PC)

ED 092845

AMERICAN SCHOOL COUNSELOR ASSOCIATION

COMMITTEE REPORT:
PRIVILEGED COMMUNICATIONS

April, 1974

APGA CONVENTION
NEW ORLEANS, LOUISIANA

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CG 009 002

John D. Shafer, Chairman
Gibbs Senior High School
St. Petersburg, FL 33712

Committee Report:

The American School Counselor Association authorized the development of the PRIVILEGED COMMUNICATIONS COMMITTEE for the expressed purpose of identifying states in the United States that have a communications privilege for school students and their counselors.

In the past, professional newsletters and journals have reported on the states which do have statuatory protection for student communications on the law books. In several cases of reporting, the information has not been completely accurate, or up to date. The PRIVILEGED COMMUNICATIONS COMMITTEE has attempted to present the most up-to-date and complete information. An attempt has also been made to provide the profession with names of persons who have personal knowledge in the area of privileged communications for their state.

The survey which appears on the next page of this report was sent to three persons in each state in the United States. One copy went to the ASCA division president in that state, another went to the state director of pupil personnel or guidance services, and the third letter went to the legislation contact person that was identified by the 1972-1973 ASCA Legislative Committee. All three letters were sent in the mail during the first week in October, 1973. Second and even third letters followed up the first request during the first week in January, 1974. A fourth letter was sent, as needed, during the first week in February, 1974. If persons were identified, through the return correspondence, as knowledgeable persons in the area of privileged communications, letters were in turn sent to them.

As of this date, February 11, 1974, the committee has received forty-seven (47) state responses out of a possible fifty (50) in the United States. This is a ninty four percent (94%) return on the national survey. Through error, the District of Columbia, Puerto Rico, and the Virgin Islands were not included in the survey.

Each respondent was asked to provide information on existing statutes which relate to privileged communications, pending legislation, or legislation which did not pass a state legislature during past sessions. Names of persons, organizations, etc. which could provide additional information on privileged communication were asked for.

SOME OBSERVATIONS:

After reading some of the correspondence from the states, it became apparent that the meaning and understanding of what privileged communications was, was not clear to the writer of some letters. PRIVILEGED COMMUNICATIONS MEANS that the information which belongs to the student, and is shared with the counselor, will not be released unless the student authorizes the release. While this is not the legal definition of privileged communications, it is the most accepted concept used in the United States. Students "own" the information shared. It is not the right of the counselor to release the information. It is the students' right only.

Communications from within some states was not consistent. A state level professional person wrote one kind of information, while a professional person from a state organization wrote conflicting information. It became apparent that communications from the state level and the organizational level were not flowing freely in both directions.

Some states expressed concerns about the statutes on the books. It is hoped that these states will share their concerns with the American School Counselor Association so that others, who are planning legislation will benefit from these concerns.

John D. Shafer, Chairman
Gibbs Senior High School
3181 Ninth Avenue, South
St. Petersburg, FL 33712
2/11/74

PRIVILEGED COMMUNICATIONS COMMITTEE
Gibbs Senior High School
3181 9th Avenue, South
St. Petersburg, FL 33712
October, 1973

Dear Colleague:

The American School Counselor Association has authorized the development of a Privileged Communications Committee. The purpose of this committee is to determine the existing laws, if any, in our fifty states which would provide for a communications privilege between students and their school guidance personnel.

The ASCA Legislation Committee during the past years has identified several states which do have laws on the books pertaining to privileged communications. It is the purpose and function of the PRIVILEGED COMMUNICATIONS COMMITTEE to obtain current information about these laws which now exist, as well as legislative bills which are pending in the legislature at the state level.

We hope to summarize all existing laws, as well as those pending, in the United States which provide for a communications privilege. A booklet will be prepared, hopefully by our April 1974 convention in New Orleans, and will be distributed to interested persons who wish to have this information made available to them.

Please assist our committee by providing the following information about your state statutes. Any information about pending legislation, or legislation which did not pass your state legislature would be appreciated. We will need the following information: (Let us know if you do not have information to report.)

- Copies of existing laws now on the books.
- Copies of legislative bills which are now pending.

- Copies of legislative bills which were introduced to committee or to the legislature itself, but were killed for lack of support.
- Names of persons, organizations, etc. which could provide additional information on privileged communications legislation in your state.

You will receive a copy of any published information from this committee if you will assist us. I sincerely hope that you will give our request for information your support. The American School Counselor Association has provided this committee with funds as a service to our profession and the resulting benefits to our counselees.

Sincerely,

John D. Shafer
ASCA Governing Board
Committee Chairman

SUMMARY OF FINDINGS

I. States where privileged communications statutes exist on the books:

Delaware, Idaho, Indiana, Maine, Maryland, Michigan* Montana, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Washington.

New Hampshire, Wyoming - records only.
*Under study for revision

II. States where legislative action is currently pending.

California, Florida, Iowa, Kentucky

III. States where legislative efforts have failed in committee, or in the legislature, or have been vetoed.

Arizona, Colorado, Hawaii, Iowa, Kentucky, Massachusetts, Minnesota, New Jersey, New York, Texas, Utah, Virginia, West Virginia, Wisconsin.

IV. States where privileged communications does not appear on the statute books, but plans are being developed, or are under study.

Alaska, Arkansas, Georgia, Illinois, Louisiana, Kentucky, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, Ohio* Tennessee, Texas, West Virginia.

*Incomplete information provided.

V. States that do not have privileged communications. There are no reported plans to develop legislation.

Alabama, Kansas, Mississippi, Rhode Island.

VI. States that did not respond to the survey.

Connecticut, New Mexico, Vermont.

ALABAMA - Alabama has no law relating to privileged communications. There are no plans for the development of legislative bills at this time.

Contact Person - Clifton Nash, Coordinator, Pupil Personnel Services, State of Alabama Department of Education, State Office Building, Montogomery, AL 36104

ALASKA - The State of Alaska has no existing laws on the books or bills pending in the state legislature relating to privileged communications. Plans are being developed for legislation, but are now only in the thinking stage.

Contact Person - Wanda J. Cooksey, Chief, Guidance Services Section, Department of Education, Division of Instructional Services, Pouch F, Alaska Office Building, Juneau, Alaska 99801

ARIZONA - There are no present privileged communications laws on the books. A bill was introduced last year, but it did not pass the committee.

HB 2090: Relating to courts and civil proceedings; providing privileged communications between student and high school counselor: IN A CIVIL ACTION A PUBLIC HIGH SCHOOL COUNSELOR SHALL NOT, WITHOUT CONSENT OF THE STUDENT, BE EXAMINED AS TO ANY COMMUNICATIONS MADE BY THE STUDENT TO HIM OR HIS ADVICE GIVEN THEREON IN THE COURSE OF RENDERING PROFESSIONAL COUNSELING, NOR SHALL ANY WORK PRODUCT OF THE COUNSELOR, WHEREVER LOCATED, BE SUBJECT TO SUBPOENA . . .COUNSELOR IS ANY PUBLIC HIGH SCHOOL TEACHER WHO HAS BEEN SPECIALLY TRAINED IN THE FIELD OF COUNSELING.

Contact Person - Mary Waits, Box 311, Scottsdale, AZ 85252

ARKANSAS - The issue of privileged communications has been under study for the past three years. Specific problems of who should be covered under the law, and also special certification for counselors must be resolved.

Contact Person - Earl D. Downs, Chairman, Privileged Communications Committee, Hope High School, Hope, Arkansas 71801

CALIFORNIA - A bill to amend existing state law will be introduced in the 1974 legislature. The bill provides that school counselors be granted the same privileges as psychotherapists, except in criminal proceedings.

ASSEMBLY BILL 1119: Extends psychotherapist privilege to persons certified and employed as school counselors, except in criminal proceedings.

...(f) A PERSON POSSESSING A VALID CREDENTIAL AND EMPLOYED BY A SCHOOL DISTRICT AS A COUNSELOR PURSUANT TO SECTION 1070 OF THE EDUCATION CODE (SHALL BE GRANTED THE PSYCHOTHERAPIST-PATIENT PRIVILEGE PROVIDED FOR IN SECTION 1010 OF EVIDENCE CODE.)

Contact Person - Carolyn M. Fowle, EdD, Legislative Representative, Lodi Unified Sch. District, 815 West Lockeford St. Lodi, CA 95240

COLORADO - Colorado does not have a law which extends the right of privileged communications to school counselors. An attempt was made last year to insert the word "counselor" into the existing laws which provides such privileges for psychologists and others. The proposal failed to pass the legislature.

Proposal was to change Chapter 154, section 1-7:
WHO MAY NOT TESTIFY WITHOUT CONSENT.
A CERTIFIED PSYCHOLOGIST (COUNSELOR) SHALL NOT BE EXAMINED WITHOUT CONSENT OF HIS CLIENT, AS TO ANY COMMUNICATIONS MADE BY THE CLIENT TO HIM, OR HIS ADVICE GIVEN THEREON IN THE COURSE OF PROFESSIONAL EMPLOYMENT . . . . .provides for the privilege to be extended to the secretary, stenographer, or clerk, and also other persons who may have participated in group therapy with persons to whom the testimony sought relates.

Contact Person - Jerry L. Terrill, PhD, Consultant in Guidance Services, Colorado Department of Education, State Office Building, 201 East Colfax Denver, CO 80203

CONNECTICUT - (Did not respond to survey)

DELAWARE - The Delaware statute on pupil disclosure passed the legislature in 1970. It relates to all school personnel.

TITLE 14, CHAPTER 41, SECTION 4114: DISCLOSURE OF PUPIL'S RECORDS
ALL PERSONNEL RECORDS OF PUPILS IN ALL PUBLIC SCHOOLS IN DELAWARE AND IN ALL PRIVATE SCHOOLS IN DELAWARE, INCLUDING BUT NOT LIMITED TO, TEST SCORES, MARKS GIVEN ACCORDING TO A SCHOOL GRADING SYSTEM, PSYCHOLOGICAL OR MEDICAL REPORTS, REPORTS RELATED TO DISCIPLINE, PERSONAL AND ANECDOTAL REPORTS, REPORTS BY GUIDANCE COUNSELORS, ARE DEEMED TO BE CONFIDENTIAL AND NOT TO BE DISCLOSED OR THE CONTENTS THEREOF RELEASED TO NON-SCHOOL PERSONNEL EXCEPT IN THE FOLLOWING MANNER:
a. records furnished upon request to federal, state, county, or municipal governmental agencies under court order.
b. copies of personnel records shall be furnished upon signed request of the pupil (if fourteen years or age or older), to any school, college, university, employer, licensed physician. (Provision for a standard release form is mentioned in the statute).
c. provision is made for release of information at appropriate intervals to parent or legal guardian. Specific reference is made to academic progress, personal health or behavior.
A MINOR HAVING REACHED THE AGE OF FOURTEEN SHALL BE CONSIDERED AS AN ADULT.....The school employee is protected from suit because of his statement and interpretation of said recors.

Contact Person: N.W. Moore, Jr., Cape Henlopen High School, Lewes, DE 19958

FLORIDA - Statutory protection for the privileged communications between students and school counselors is being sought for the third year. Legislation is limited to student drug abusers only, and includes school counselors, school psychologists, school social workers.

A BILL TO BE ENTITLED AN ACT RELATING TO SCHOOLS; CREATING SECTION 232.46, FLORIDA STATUTES, PROTECTING PRIVILEGED COMMUNICATIONS BETWEEN STUDENT-CLIENTS AND SCHOOL GUIDANCE COUNSELORS, SPECIALISTS IN SCHOOL PSYCHOLOGY, AND VISITING TEACHERS (SOCIAL WORKERS) CONCERNING DRUG PROBLEMS, INCLUDING ALCOHOL PROBLEMS OF STUDENTS; PROVIDING IMMUNITY FROM DISCLOSURE IN ADMINISTRATIVE, JUDICIAL, OR LEGISLATIVE PROCEEDINGS; PROVIDING FOR DISCLOSURE TO PARENTS OR GUARDIANS; PROVIDING AN EFFECTIVE DATE.

There is provision in this bill for students to request that parents or gaurdians not be informed of confidential information divulged to the school counselor, psychologist, or social worker. There is also provision for information to be released by the professional person, WHEN IN HIS PROFESSIONAL JUDGEMENT IT IS IN THE BEST INTEREST OF THE STUDENT-CLIENT TO DO SO, OR WHEN THE STUDENT-CLIENT REQUEST IN WRITING THAT SUCH INFORMATION SHALL BE RELEASED.

Contact Person - John D. Shafer, Chairman, Legislation Committee, Florida School Counselor Association, 2072 Dolphin Blvd., South St. Petersburg, FL 33707

GEORGIA - The State of Georgia has no laws on the books allowing for privileged communications between students and their school guidance personnel. A committee has been formed to study the needs of such legislation.

Contact Person - Dr. Louis E. Shilling, School of Education, Atlanta University Atlanta, GA 30314

HAWAII - The State of Hawaii does not provide, in the stautes, for privileged communications for school guidance personnel. An attempt was made last year to add the "outreach counselor" to the same statute which grants privileged communications to the clergy and physician. (The outreach counselor is employed in the states' dropout program). The bill failed to pass the legislature.

...NO OUTREACH COUNSELOR EMPLOYED IN THE DEPARTMENT OF EDUCATION OUTREACH PROGRAM SHALL, WITHOUT THE CONSENT OF THE ADVISEE WHOM HE COUNSELS, DIVULEG IN ANY ACTION, SUIT, OR PROCEEDING, WHETHER CIVIL OR CRIMINAL, ANY STATEMENT MADE TO HIM IN HIS CAPACITY AS OUTREACH COUNSELOR.

Contact Person - Clara Katekaru, Program Specialist Guidance and Counseling, State of Hawaii Department of Education, P.O. Box 2360, Honolulu, HI 96804

IDAHO - Legislation was enacted in 1971 which would allow for privileged communications for certified counselors, psychologists, and psychological examiners.

AN ACT RELATING TO PRIVILEGED COMMUNICATIONS, AMMENDING SECTION 9-203, IDAHO CODE, TO PROVIDE IMMUNITY FROM DISCLOSURE BY COUNSELORS, PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS OF PRIVILEGED OR CONFIDENTIAL COMMUNICATIONS MADE THERETO BY STUDENTS OF PUBLIC OR PRIVATE SCHOOLS IN ANY CIVIL OR CRIMINAL ACTION TO WHICH SUCH STUDENT SO COUNSELED IS A PARTY: AND DECLARAN EMERGENCY.

...ANY CERTIFICATED COUNSELOR, PSYCHOLOGIST OR PSYCHOLOGICAL EXAMINER, DULY APPOINTED, REGULARLY EMPLOYED AND DESIGNATED IN SUCH CAPACITY BY ANY PUBLIC OR PRIBATE SCHOOL IN THIS STATE FOR THE PURPOSE OF COUNSELING STUDENTS, SHALL BE IMMUNE FROM DISCLOSING, WITHOUT THE CONSENT OF THE STUDENT, ANY COMMUNICATION MADE BY ANY STUDENT SO COUNSELED OR EXAMINED IN ANY CIVIL OR CRIMINAL ACTION TO WHICH SUCH STUDENT IS A PARTY. SUCH MATTERS SO COMMUNICATED SHALL BE PRIVILEGED AND PROTECTED AGAINST DISCLOSURE.

Contact Person - Department of Education, State of Idaho, Len Jordan, Office Building, Boise, ID 83720

ILLINOIS - Privileged communications legislation is one of three major priority issues of the Illinois School Counselors Association this year. There are, at present, no laws on the books related to a communications privilege. Bills have been introduced in the past, but with little success.

Contact Person - Phil Hartweg, Legislative Committee, Illinois School Counselors Association York Community High School, 355 W. Charles Road, Elmhurst, IL 60126

INDIANA - A law providing for immunity of counselors from disclosing priviledged communications was enacted in 1965.

28-4537. IMMUNITY OF COUNSELORS FROM DISCLOSING PRIVILEGED OR CONFIDENTIAL COMMUNICATIONS. - ANY COUNSELOR DULY APPOINTED OR DESIGNATED A COUNSELOR FOR THE SCHOOL SYSTEM BY ITS PROPER OFFICERS AND FOR THE PURPOSE OF COUNSELING PUPILS IN SUCH SCHOOL SYSTEM SHALL BE IMMUNE FROM DISCLOSING ANY PRIVILEGED OR CONFIDENTIAL COMMUNICATION MADE TO SUCH COUNSELOR AS SUCH BY ANY SUCH PUPIL HEREIN REFERRED TO. SUCH MATTERS SO COMMUNICATED SHALL BE PRIVILEGED AND PROTECTED AGAINST DISCLOSURE.

Contact Person - Mrs. Rachel K. Oesting, 710 South Fourth Street, Chesterton, IN 46304

IOWA - Legislation is presently being sought to add school counselors to present privilege granted to attorneys and physicians. A bill filed last year failed to get out of committee.

...NO PRACTICING ATTORNEY, COUNSELOR, PHYSICIAN, SURGEON, CERTIFIED GUIDANCE COUNSELOR AS PROVIDED IN SECTION TWO HUNDRED FIFTY-SEVEN POINT TWENTY-FIVE ....OF THE CODE, OR THE STENOGRAPHER OR CONFIDENTIAL COMMUNICATION PROPERLY ENTRUSTED TO HIM IN HIS

PROFESSIONAL CAPACITY, AND NECESSARY AND PROPER TO ENABLE HIM TO DISCHARGE THE FUNCTION OF HIS OFFICE ACCORDING TO THE USUAL COURSE OF PRACTICE OR DISCIPLINE.

Contact Person - Giles J. Smith, Chief, Guidance Services Section, Iowa Department of Public Instruction, Des Moines, IA 50319

KANSAS - There are no current laws relating to privileged communications in Kansas.

Contact Person - Frank Ybarra, Supervisor of Guidance Topeka Public Schools, 1601 Van Buren Topeka, KS 66612

KENTUCKY - The Kentucky Personnel and Guidance Association sponsored a privileged communications bill during the last session of their legislature. The bill failed in the State Senate. The bill will be reintroduced this year.

ANY CERTIFIED COUNSELOR, WHO IS DULY APPOINTED AND REGULARLY EMPLOYED FOR THE PURPOSE OF COUNSELING IN A PUBLIC SCHOOL, OR A PRIVATE SCHOOL OF THIS STATE, SHALL BE IMMUNE FROM DISCLOSING IN ANY CIVIL OR CRIMINAL COURT PROCEEDING, WITHOUT THE CONSENT OF THE COUNSELEE, ANY COMMUNICATION MADE BY THE COUNSELEE TO THE COUNSELOR IN HIS PROFESSIONAL CHARACTER, OR THE ADVICE THEREON. IF THE COUNSELEE IS LESS THAN EIGHTEEN YEARS OF AGE, NEIGHER THE COMMUNICATION OR ADVICE THEREON SHALL BE DISCLOSED IN THE COURT PROCEEDING WITHOUT THE CONSENT OF THE COUNSELEE AND HIS PARENT OR LEGAL GUARDIAN.

Contact Person - Jack Hendrix, KPGA Legislative Comm. Rte. 4, Box 15-D, London, KY 40741

LOUISIANA - No legislation exists which protects the communications between school counselors and students in Louisiana. The Louisiana School Counselor Association, Political Action Committee is presently looking into the immunity provided for the clinical social workers in that state. R.S. 37:2714, Act 706 of the 1972 Session related to privilege communications and clinical social workers. Specific information was not provided.

Contact Person - Ms. Bette Levine, President, Louisiana School Counselor Association, 2624 Hundred Oaks, Baton Rouge, LA 70808

MAINE - Privileged communications for school counselors was enacted in 1973.

AN ACT TO ESTABLISH PRIVILEGED COMMUNICATIONS FOR SCHOOL COUNSELORS. SECTION 806 REVISED STATUTES --- THE RIGHT OF PRIVILEGED COMMUNICATIONS SHALL BE EXTENDED TO SCHOOL COUNSELORS, INCLUDING BUT NO LIMITED TO, ELEMENTARY AND SECONDARY COUNSLORS AND COUNSELORS WHO MAY WORK IN A SCHOOL SETTING AT A POST-SECONDARY SCHOOL.

A COUNSELOR TO WHOM THIS PRIVILEGE IS GRANTED SHALL NOT BE REQUIRED, EXCEPT AS PROVIDED IN THIS SECTION, TO DIVULGE OR TO RELEASE INFORMATION WHICH HE MAY HAVE GATHERED IN HIS COUNSELING RELATION WITH SAID CLIENT OR, IN THE CASE OF A MINOR, THE PERSON OR AGWNCY HAVING LEGAL CUSTODY OF SAID MINOR.

Section 806 provides for a definition of a client and a school counselor. It also provides for the release of information under certain circumstances. ...IN THE EVENT THAT THE COUNSELEE OR CLIENT'S CONDITION IS SUCH AS TO REQUIRE OTHERS TO ASSUME RESPONSIBILITY FOR HIM, OR WHEN THERE IS CLEAR AND IMMINENT DANGER TO THE COUNSELEE OR CLIENT OR TO OTHERS, THE COUNSELOR IS EXPECTED TO REPORT THIS FACT TO AN APPROPRIATE RESPONSIBLE AUTHORITY OR TAKE SUCH OTHER EMERGENCY MEASURES AS THE SITUATION DEMANDS.

Contact Person - Ms. Betty Mc Laughlin, Guidance Consultant, Department of Education Augusta, ME 04330

MARYLAND - Confidential communications exists between school personnel students who are seeking to overcome drug abuse. The law was enacted in 1971.

CHAPTER 692, SECTION 85A, LAWS OF MARYLAND - a. WHENEVER A STUDENT SHALL SEEK INFORMATION FOR THE PURPOSE OF OVERCOMING ANY FORM OF DRUG ABUSE, AS DEFINED IN SECTION 2d OF ARTICLE 43b OF THIS CODE, FROM ANY TEACHER, COUNSELOR, PRINCIPAL OR OTHER PROFESSIONAL EDUCATOR EMPLOYED BY AN EDUCATIONAL INSTITUTION APPROVED UNDER THE PROVISIONS OF SECTION 11 and 12 OF THIS ARTICLE, NO STATEMENT, WHETHER ORAL OR WRITTEN, MADE BY THE STUDENT AND NO OBSERVATION OR CONCLUSION DERIVED SHALL BE ADMISSIBLE AGAINST THE STUDENT IN ANY PROCEEDING.

b. THE DISCLOSURE OF ANY REPORTS, STATEMENTS, OBSERVATIONS, CONCLUSIONS AND OTHER INFORMATION WHICH HAS ASSEMBLED OR PROCURED BY THE EDUCATOR THROUGH THIS CONTACT, SHALL NOT BE REQUIRED BY ANY RULE, REGULATION

OR ORDER OF ANY KIND.

Contact Person - Mrs. Marion Malone, MSCA Legislative Chairperson, Rte. 3, Box 106-B, Annapolis, MD 21403

MASSACHUSETTS - The Massachusetts School Counselor Association submitted the following bill on privilege communications last year. The bill failed to pass the state legislature.

AN ACT PROVIDING THAT CERTAIN COMMUNICATIONS BETWEEN A HIGH SCHOOL STUDENT AND HIS GUIDANCE COUNSELOR SHALL BE PRIVILEGED. ...SECTION 34-c (be amended). A PROFESSIONAL GUIDANCE COUNSELOR IN A JUNIOR HIGH SCHOOL OR HIGH SCHOOL SHALL NOT, WITHOUT THE CONSENT OF THE PERSON MAKING THE DISCLOSURE, BE ALLOWED TO DISCLOSE ANY COMMUNICATION MADE TO HIM IN HIS PROFESSIONAL CHARACTER, IN THE COURSE OF HIS PROFESSIONAL DEALINGS WITH STUDENTS ENJOINED BY THE RULES, PRACTICES OR STANDARDS OF HIS PROFESSION: NOR SHALL SUCH GUIDANCE COUNSELOR TESTIFY BEFORE LEGISLATIVE AND ADMINISTRATIVE PROCEEDINGS AS TO ANY COMMUNICATION MADE TO HIM BY ANY SUCH STUDENT SEEKING HIS COUNSEL AND COMFORT, OR AS TO HIS ADVICE GIVEN THEREON IN THE COURSE OF HIS PROFESSIONAL DUTIES OR IN HIS PROFESSIONAL CHARACTER WITHOUT THE CONSENT OF SUCH PERSON. A PROFESSIONAL GUIDANCE COUNSELOR FOR THE PURPOSES OF THIS PARAGRAPH SHALL BE A SCHOOL COUNSELOR WHO HAS FULFILLED THE GRADUATE COURSE REQUIREMENTS AS SET BY THE BUREAU OF TEACHER PLACEMENT AND CERTIFICATION OF THE DEPARTMENT OF EDUCATION.

Conatct Person - Mr. Robert C. Norton, Chairman, Legislation Committee, Massachusetts School Counselor Association, Marshfield High School
Marshfield, MA 02050

MICHIGAN - A bill was enacted in 1963 allowing for pribileged communications between students and all professional school employees. The Michigan School Counselor Association is presently seeking to revise the current statute.

JUDICATURE ACT OF 1961 (effective January 1963) 600.2165 GENERAL SCHOOL LAWS OF MICHIGAN. NO TEACHER, GUIDANCE OFFICER, SCHOOL EXECUTIVE OR OTHER PROFESSIONAL PERSON ENGAGED IN CHARACTER BUILDING IN PUBLIC SCHOOLS OR IN ANY OTHER EDUCATIONAL INSTITUTIONS, WHO MAINTAINS RECORDS OF STUDENTS' BEHAVIOR OR WHO HAS SUCH RECORDS IN HIS CUSTODY, OR WHO RECEIVES IN CONFIDENCE COMMUNICATIONS FROM STUDENTS OR OTHER JUVENILES, SHALL BE ALLOWED IN ANY PROCEEDINGS, CIVIL OR CRIMINAL, IN ANY COURT OF THIS STATE, TO DISCLOSE ANY INFORMATION OBTAINED BY HIM FROM SUCH RECORDS

OR SUCH COMMUNICATIONS: NOR TO PRODUCE SUCH TESTIMONY MAY BE GIVEN, WITH THE CONSENT OF THE PERSON SO CONFIDING OR TO WHOM SUCH RECORDS RELATE, OF SUCH PERSON BE TWENTY-ONE YEARS OF AGE OR OVER, OR IF SUCH PERSON BE A MINOR, WITH THE CONSENT OF HIS PARENT OR LEGAL GUARDIAN.

Contact Person - Mr. Ron Shoemaker, President,
Michigan School Counselor Association
Godwin Heights Public Schools
Grand Rapids, MI 49508

Also - Robert E. Stout
Guidance Consultant
Department of Education
Lansing, MI 48902

MINNESOTA - Two bills were introduced into the legislature during the past session. One would not allow any school professional staff person to release any information without the consent of a juvenile, any communication or information dealing with such juvenile as to drug usage, use of alcohol, or the existance of venereal disease, when communicated to such school employee by said juvenile or his parents. The second law would make it illegal for any officer or employee of any school or college to release any information concerning a student's conduct, activities, or academic performance during his attendance at the institution without the concent of the student or his parents. Neither bill passed the legislature.

The Minnesota School Counselor Association currently has a committee working on future legislation.

Contact Person - Dr. Reynold Erickson, Director
Pupil Personnel Services
Department of Education
Capitol Square
550 Cedar Street
St. Paul, MN 55101

MISSISSIPPI - There are no laws on the statute books relating to privileged communications for school counselors, or other school personnel. The Department of Education does not feel that there is a need for such legislation at this time.

Contact Person - Dr. Clyde J. Hatten
Supervisor, Pupil Personnel Services
Mississippi Department of Education
Division of Instruction, P.O. Box 771
Jackson, MS 39205

MISSOURI - Legislation dealing with privileged communications is being sought by the Missouri Personnel and Guidance Association and the St. Louis Personnel and Guidance Association. The following is a draft of the proposed legislative bill.

THOSE INDIVIDUALS OR AGENCIES WHO BY THE DEMANDS OF THEIR POSITIONS OR RESPONSIBILITIES ARE PRIVY TO INFORMATION OF A CONFIDENTIAL NATURE, ARE NOT TO COMMUNICATE SUCH INFORMATION TO ANYONE WITHOUT THE SIGNED RELEASE BY THE GIVER OF THE CONFIDENTIAL INFORMATION.

SUCH INFORMATION, EITHER WRITTEN OR VERBAL, GIVEN IN ABOVE CONTEXT IS CONSIDERED INFORMATION WHICH DEALS WITH, BUT NOT LIMITED TO, THE INDIVIDUAL'S PERSONALITY, FEELINGS, HEALTH, ABILITIES, ACTIVITIES, FAMILY, SCHOOL, WORK, ASSOCIATIONS OR ANY OTHER FACTORS, AND SUCH INFORMATION IS GIVEN BY THE INDIVIDUAL.

THIS RIGHT OF CONFIDENTIALITY WILL NOT STAND IF, IN THE PROFESSIONAL'S OPINION, THE INFORMATION GIVEN INDICATES IMMINENT PHYSICAL DANGER TO THE INDIVIDUAL OR SOCIETY.

Contact Person - Ms. Bebe Kennedy, Chairperson
St. Louis PGA Legislation Committee
7384 Stratford Avenue
St. Louis, MO 63130

MONTANA - In 1971 the counselor, psychologist, nurse, and teacher employed in an educational institution was added to the existing privileged communications law. The Montana Personnel and Guidance Association supported the passage of this law.

CHAPTER 61, PARAGRAPH 7: AN ACT PROVIDING FOR THE CREATION OF A CONFIDENTIAL RELATIONSHIP BETWEEN STUDENT AND SCHOOL PERSONNEL. SECTION 1. SECTION 93-701-4, R.C.M., 1947 is ammended to read: 93-701-4. PERSONS IN CERTAIN RELATIONS CANNOT BE EXAMINED.

THERE ARE PARTICULAR RELATIONS IN WHICH IT IS THE POLICY OF THE LAW TO ENCOURAGE CONFIDENCE AND TO PRESERVE IT INVIOLATE: THEREFORE, A PERSON CANNOT BE EXAMINED AS A WITNESS IN THE FOLLOWING CASES: ...A COUNSELOR, PSYCHOLOGIST, NURSE, OR TEACHER, EMPLOYED BY ANY EDUCATIONAL INSTITUTION, CANNOT BE EXAMINED AS TO COMMUNICATIONS MADE TO HIM IN CONFIDENCE BY A DULY REGISTERED STUDENT OF SUCH INSTITUTION, PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT APPLY WHERE CONSENT HAS BEEN GIVEN BY THE STUDENT, IF NOT A MINOR, OR IF HE IS A MINOR, BY THE STUDENT AND HIS PARENT OR LEGAL GUARDIAN.

Contact Person - Mr. Del Gustin, Career Education Coordinator
Montana Department of Education
Helena, MT 59601

NEBRASKA - At the present time, the State of Nebraska has no statutory provision for privileged communication between school counselors and their clients. The Nebraska Personnel and Guidance Association has directed its legislative committee to study the feasibility of introducing legislation relative to this matter.

Contact Person - Dr. Roger Hudson, Administrator
Student Personnel Services
Nebraska Department of Education
233 South 10th Street
Lincoln, NB 68508

NEVADA - Through the joint efforts of the Nevada Personnel and Guidance Association and the Nevada State Education Association, a bill granting counselors, psychologists and psychological examiners privileged communications was enacted in 1973. Exceptions to this bill are about information relating to criminal offenses which are punishable by death or life imprisonment.

AN ACT RELATING TO PRIVILEGED COMMUNICATIONS; PROVIDING A LIMITED PRIVILEGE FOR COMMUNICATIONS BETWEEN STUDENTS AND COUNSELORS; PROVIDING A PRIVILEGE FOR CERTAIN COMMUNICATIONS BETWEEN STUDENTS AND TEACHERS CONCERNING THE USE OF DRUGS OR DRUGS OR ALCOHOL; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

CHAPTER 49 OF NRS, SECTION 2 AND 3 provides for the definition of a counselor and teacher.....SECTION 2, number 2, EXCEPT FOR COMMUNICATIONS RELATING TO ANY CRIMINAL OFFENSE THE PUNISHMENT OFR WHICH IS DEATH OR LIFE IMPRISONMENT, COMMUNICATIONS BY A PUPIL TO A COUNSELOR IN THE COURSE OF COUNSELING OR PSYCHOLOGICAL EXAMINATION ARE PRIVILEGED COMMUNICATIONS, AND A COUNSELOR SHALL NOT, WITHOUT THE CONSENT OF THE PUPIL, BE EXAMINED AS A WITNESS CONCERNING ANY SUCH COMMUNICATION IN ANY CIVIL OR CRIMINAL ACTION TO WHICH SUCH PUPIL IS A PARTY.

...SECTION 3, number 2, COMMUNICATIONS BY A PUPIL TO A TEACHER CONCERNING THE PUPIL'S POSSESSION OR USE OF DRUGS OR ALCOHOLIC BEVERAGES MADE WHILE THE TEACHER WAS COUNSELING OR ATTEMPTING TO COUNSEL SUCH PUPIL ARE PRIVILEGED COMMUNICATIONS AND THE TEACHER SHALL NOT, WITHOUT THE CONSENT OF THE PUPIL, BE EXAMINED AS A WITNESS CONCERNING ANY SUCH COMMUNICATION IN ANY CIVIL OR CRIMINAL ACTION TO WHICH THE PUPIL IS A PARTY.

Contact Person - Mrs. Madelyn Rutherford, Past President
Nevada Personnel and Guidance Association
Sparks Junior High School
2275 18th Street
Sparks, NV 89431

NEW HAMPSHIRE - There is currently a law on the statute books in New Hampshire which protects a pupil's personal school records. The New Hampshire School Counselor Association and the New Hampshire Personnel and Guidance Association are currently developing a bill related to privileged communications.

CHAPTER 91-A: ACCESS TO PUBLIC RECORDS.
DEFINITION OF PUBLIC PROCEEDINGS. THE TERM "PUBLIC PROCEEDINGS" AS USED IN THIS CHAPTER MEANS THE TRANSACTION OF ANY FUNCTIONS AFFECTING ANY OR ALL CITIZENS OF THE STATE.....
EXEMPTIONS. THE RECORDS OF THE FOLLOWING BODIES ARE EXEMPTED FROM THE PROVISIONS OF THIS CHAPTER:.....
III. PERSONAL SCHOOL RECORDS OF PUPILS.

Contact Person - Mr. David W. Veno, President
New Hampshire School Counselor Assoc.
Timberlane Regional High School
P.O. Box 466
Plaistow, NH 03865

NEW JERSEY - Several attempts have been made by the New Jersey Personnel and Guidance Association to have privileged communications bills passed through the state legislature. New legislative bills are currently being developed in this area which relate to both student records and counseling.

Contact Person - Steve Bodnarchuk, Past President
New Jersey Personnel and Guidance Assoc.
7 Onka Drive
Somerville, NJ 08876

NEW YORK - A privileged communications bill, limited to communications between student drug users and designated school personnel passed the Senate and the Assembley in 1973. The Governor vetoed this legislative action.

For two years the Regents for Legislative Action recommended the passage of "Bills on Privileged Communications for Designated School Personnel. The Regents' recommendation for 1974 was dropped.

AN ACT TO AMMEND THE CIVIL PRACTICE LAW AND RELES, IN RELATION TO CONFIDENTIAL COMMUNICATIONS BETWEEN PUPILS AND CERTAIN SCHOOL PERSONNEL. SECTION 4509. SCHOOL PERSONNEL. A SCHOOL PSYCHOLOGIST, GUIDANCE COUNSELOR AND SUCH TEACHERS WITHIN ANY PUBLIC SCHOOL DULY CERTIFIED UNDER THE PROVISIONS OF THE EDUCATION LAW, AS SHALL BE EXPRESSLY DESIGNATED BY THE PRINCIPAL OF SUCH SCHOOL UPON WRITTEN NOTICE TO THE COMMISSIONER OF EDUCATION, SHALL NOT BE REQUIRED TO DISCLOSE A COMMUNICATION MADE BY A PUPIL TO HIM IN HIS PROFESSIONAL CAPACITY, OR HIS ADVICE GIVEN THEREON, CONCERNING THE USE OR POSSESSION OF A DRUG IN VIOLATION OF LAW, EXCEPT WHERE THE PUPIL WAIVES THE PRIVILEGE HEREIN CONFERRED.

Contact Person - Joseph J. Gerdin, Ed.D
Associate in Guidance
State Department of Education
Albany, NY 12224

NEW MEXICO - (Did not respond to survey)

NORTH CAROLINA - After three years of "concentrated" efforts by the North Carolina Personnel and Guidance Association Legislative Committee, AN ACT FOR PRIVILEGED COMMUNICATIONS BETWEEN STUDENTS AND SCHOOL COUNSELORS passed into law. The law was enacted in 1971 and establishes privileged communication between students and school counselors. A judge may compel disclosure in the interest of justice.

N. C. STATUTE 8-53.4 NO PERSON CERTIFIED BY THE STATE DEPARTMENT OF PUBLIC INSTRUCTION AS A SCHOOL COUNSELOR AND DULY APPOINTED OR DESIGNATED AS SUCH BY THE GOVERNING BODY OF A PUBLIC SCHOOL SYSTEM WITHIN THIS STATE OR BY THE HEAD OF ANY PRIVATE SCHOOL WITHIN THIS STATE SHALL BE COMPETENT TO TESTIFY IN ANY ACTION, SUIT, OR PROCEEDING CONCERNING ANY INFORMATION ACQUIRED IN RENDERING COUNSELING SERVICES TO ANY STUDENT ENROLLED IN SUCH PUBLIC SCHOOL SYSTEM OR PRIVATE SCHOOL, AND WHICH INFORMATION WAS NECESSARY TO ENABLE HIM TO RENDER COUNSELING SERVICES; PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT APPLY WHERE THE STUDENT IN OPEN COURT WAIVES THE PRIVILEGE CONFERRED; PROVIDED FURTHER THAT THE PRESIDING JUDGE MAY COMPEL SUCH DISCLOSURE, IN HIS OPINION THE SAME IS NECESSARY TO A PROPER ADMINISTRATION OF JUSTICE.

Contact Person - Dr. Alice T. Solomon, Guidance Consultant, Division of Pupil Personnel Services, Department of Public Instruction, State of North Carolina
Raleigh, NC 27611

Also -

Mrs. Charlotte S. Cole, President
North Carolina School Counselor Assoc.
Rte. 1, Box 72
Blowing Rock, NC 28605

NORTH DAKOTA - Currently on the books is a law enacted in 1969 which makes certified school counselors immune from disclosing privileged communications information.

CHAPTER 309 SCHOOL COUNSELORS IMMUNE FROM DISCLOSING PRIVILEGED INFORMATION. 31-01-06.1 COUNSELORS SHALL BE IMMUNE FROM DISCLOSING INFORMATION GIVEN BY PUPILS. FOR THE PURPOSE OF COUNSELING IN A SCHOOL SYSTEM, ANY ELEMENTARY OR SECONDARY SCHOOL COUNSELOR POSSESSING A VALID NORTH DAKOTA GUIDANCE CREDENTIAL FROM THE DEPARTMENT OF EDUCATION, AND WHO HAS BEEN DULY APPOINTED A COUNSELOR FOR A SCHOOL SYSTEM BY ITS PROPER AUTHORITY, SHALL BE LEGALLY IMMUNE FROM DISCLOSING ANY PRIVILEGED OR CONFIDENTIAL COMMUNICATION MADE TO SUCH COUNSELOR IN A COUNSELING INTERVIEW. SUCH COMMUNICATION SHALL BE DISCLOSED WHEN REQUESTED

BY THE COUNSELEE.

Contact Person - June E. Beck, Counselor
Mandan High School
Mandan, ND 58544

Also -

Dr. Glenn R. Dolsu, Division of
Guidance Services
Department of Public Instruction
Bismarck, ND 58501

OHIO - No legislation exists in the State of Ohio which relates to privileged communications for school counselors. The Ohio School Counselor Association has been working through legislative channels to secure protection for counselors in areas of confidentiality. (No other information has been provided at the time of this writing.)

Contact Person - Dr. Irene G. Bandy, Consultant
Guidance Counseling and Development
Services
Ohio Department of Education
Columbus, OH 43212

OKLAHOMA - Attorneys have ruled that privileged communications are covered under Oklahoma School Law for school counselors as well as for teachers.

SECTION 94. INFORMATION CONCERNING PUPIL. IT SHALL BE UNLAWFUL AND A MISDEMEANOR FOR ANY TEACHER TO REVEAL ANY INFORMATION CONCERNING ANY CHILD OBTAINED BY HIM IN HIS CAPACITY AS TEACHER EXCEPT AS MAY BE REQUIRED IN THE PERFORMANCE OF HIS CONTRACTUAL DUTIES, EXCEPT SAID INFORMATION MAY BE FURNISHED TO THE PARENT OR GUARDIAN OF SAID CHILD UPON REQUEST.

Contact Person - Dr. Blan E. Sandlin, Administrator
Guidance and Counseling
State Department of Education
Oklahoma City, OK 73105

OREGON - Statutes provide for confidential pupil records. Communications between certificated staff members and students which relates to the personal affairs of the student or his family are also confidential. There is provision for release of information in cases of expected child abuse.

SECTION 4. ORS 44.040 (1) THERE ARE PARTICULAR RELATIONS IN WHICH IT IS THE POLICY OF THE LAW TO ENCOURAGE CONFIDENCE, AND TO PRESERVE IT INVIOLATE; THEREFORE, A PERSON CANNOT BE EXAMINED AS A WITNESS IN THE FOLLOWING CASES:

1. A CERTIFICATED STAFF MEMBER OF AN ELEMENTARY OR SECONDARY SCHOOL SHALL NOT BE EXAMINED IN ANY CIVIL ACTION, SUIT OR PROCEEDING, AS TO ANY CONVERSATION BETWEEN THE CERTIFICATED STAFF MEMBER AND A STUDENT WHICH RELATES TO THE PERSONAL AFFAIRS OF THE STUDENT OR HIS FAMILY, AND WHICH IF DISCLOSED WOULD TENT TO DAMAGE OR INCRIMINATE THE STUDENT OR HIS FAMILY. ANY VIOLATION OF THE PRIVILEGE PROVIDED BY THIS SECTION MAY RESULT IN THE SUSPENSION OF CERTIFICATION OF THE PROFESSIONAL STAFF MEMBER AS PROVIDED IN ORS 342.175.....

2. IF A PARTY TO THE ACTION, SUIT OR PROCEEDINGS OFFERS HIMSELF AS A WITNESS, IT IS DEEMED A CONSENT TO THE EXAMINATION ALSO OF A WIFE, HUSBAND, ATTORNEY, CLERGYMAN, PHYSICIAN OR SURGEON, STENOGRAPHER, LICENSED PROFESSIONAL NURSE, OR CERTIFIED PSYCHOLOGIST OR CERTIFICATED STAFF MEMBER ON THE SAME SUBJECT.

SECTION 5. ANY CATEGORY OF STUDENT RECORDS SPECIFICALLY DESIGNATED AS CONFIDENTAIL PURSUANT TO SECTION 2 OF THIS ACT SHALL NOT BE DEEMED A PUBLIC RECORD....

Contact Person - Dr. Leslie L. Adkins, Director
Student Services
Oregon State Department of Education
942 Lancaster Drive, NE
Salem, OR 97310

PENNSYLVANIA - ACT 287, passed into law in December of 1972, provides for privileged communications for counselors, nurses, school psychologists and their secretaries. This legislation resulted from the efforts of the Pennsylvania School Counselor Association and the Pennsylvania State Education Association.

ACT 287, Section 1319: CONFIDENTIALITY OF STUDENT COMMUNICATIONS. NO GUIDANCE COUNSELOR, SCHOOL NURSE OR SCHOOL PSYCHOLOGIST IN THE PUBLIC SCHOOLS OR IN PRIVATE OR PAROCHIAL SCHOOLS OR OTHER EDUCATIONAL INSTITUTIONS PROVIDING ELEMENTARY OR SECONDARY EDUCATION, INCLUDING ANY CLERICAL WORKER OF SUCH SCHOOLS AND INSTITUTIONS, WHO, WHILE IN THE COURSE OF HIS PROFESSIONAL DUTIES FOR A GUIDANCE COUNSELOR, SCHOOL NURSE OR SCHOOL PSYCHOLOGIST, HAS ACQUIRED INFORMATION FROM A STUDENT IN CONFIDENCE SHALL BE COMPELLED OR

ALLOWED WITHOUT THE CONSENT OF THE STUDENT, IF THE STUDENT IS EIGHTEEN YEARS OF AGE OR OVER, OR IF THE STUDENT IS UNDER THE AGE OF EIGHTEEN YEARS, WITHOUT THE CONSENT OF HIS OR HER PARENT OR LEGAL GUARDIAN, TO DISCLOSE THAT INFORMATION IN ANY LEGAL PROCEEDING, CIVIL OR CRIMINAL, TRAIL, INVESTIGATION BEFORE ANY GRAND, TRAVERSE OR PETIT JURY, OR ANY OFFICERS THEREOF, BEFORE THE GENERAL ASSEMBLY OR ANY COMMITTEE THEREOF, OR BEFORE ANY COMMISSION, DEPARTMENT OF BUREAU OF THE COMMONWEALTH, OR MUNICIPAL BODY, OFFICER OR COMMITTEE THEREOF, NOTWITHSTANDING THE CONFIDENTIALITY PROVISION OF THIS SECTION, NO SUCH PERSON SHALL BE EXCUSED OR PREVENTED FROM COMPLYING WITH THE ACT OF AUGUST 14, 1967.

The ACT also provides for release of information in cases of child abuse. Penalties are provided for failure to do so.

Contact Person - David W. Fluke, Director of Guidance
Springfield High School
Springfield, PA 19064

RHODE ISLAND - Thare are no current laws in Rhode Island granting privileged communications to school counselors. The committee has been advised by the contact person that only the attorneys-at-law enjoy the privilege, then with some exceptions. There appears to be little support in the State for legislation related to confidential communications.

Contact Person - Dr. Eileen A. Matteo, Regulatory Functions Unit, Rhode Island Department of Education, Hayes Street
Providence, RI 02908

SOUTH CAROLINA - Information from this state is incomplete. It appears that there is a limited privileged communications statute on the books.

NO. 445, SOUTH CAROLINA STATUTES AT LARGE.
SECTION 5, 1971. IMMUNITY FOR CERTAIN DRUG ADDICTS. ANY PERSON ADDICTED TO OR DEPENDENT UPON NARCOTICS OR DANGEROUS DRUGS MAY SEEK ADIVCE CONCERNING SUCH PROBLEM, AND INFORMATION AS TO WHERE HE MAY OBTAIN TREATMENT AND REHABILITATION FROM A MEDICAL PRACTITIONER OR HOSPITAL, A COLLEGE OR UNIVERSITY COUNSELING BUREAU OR GUIDANCE COUNSELORS IN ELEMENTARY, JUNIOR AND HIGH SCHOOLS WITHOUT FEAR OF ARREST OR OF BEING REPORTED TO LAW ENFORCEMENT AUTHORITIES FOR PROSECUTION AS A DRUG LAW VIOLATOR.

Contact Person - Jane Lawther, Career Education Coordinator, Dent Junior High Sch.
2719 Decker Blvd.
Columbia, SC 29206

SOUTH DAKOTA - Enacted in 1972 was "AN ACT RELATING TO THE ESTABLISHMENT OF PRIVILEGED COMMUNICATIONS AND INFORMATION WHEN GIVEN TO A SCHOOL COUNSELOR BY A STUDENT." An ammendment to the current statute may be developed by the South Dakota Personnel and Guidance Association.

CHAPTER 131, SESSION LAWS OF 1972, SDCL 19-2-5.1
NO COUNSELOR, CERTIFICATED IN ACCORDANCE WITH THE CERTIFICATION REGULATIONS OF THE STATE BOARD OF EDUCATION AND REGULARLY EMPLOYED AS COUNSELOR FOR A PRIVATE OR PUBLIC ELEMENTARY OR SECONDARY SCHOOL OR SCHOOL SYSTEM IN THE STATE OF SOUTH DAKOTA, MAY DIVULGE TO ANY OTHER PERSON, OR BE EXAMINED CONCERNING ANY INFORMATION OR COMMUNICATION GIVEN TO HIM IN HIS OFFICIAL CAPACITY BY A STUDENT UNLESS:
1. THIS PRIVILEGE IS WAIVED IN WRITING BY THE STUDENT; OR
2. THE INFORMATION OR COMMUNICATION WAS MADE TO THE COUNSELOR FOR THE EXPRESS PURPOSE OF BEING COMMUNICATED OR OF BEING MADE PUBLIC.

Contact Person - Dr. Richard D. Parker, Administrator
Guidance and Counseling Services
South Dakota Department of Public Instruction
Pierre, SD 57501

TENNESSEE - The State of Tennessee does not have a law giving the school counselor and the counselee privileged communications. At present the Tennessee Personnel and Guidance Association legislative committee is developing a bill which would provide for confidential communications for students.

Contact Person - Dr. Luther Parker, Director of Counseling, Christian Brothers High School
5900 Walnut Grove Road
Memphis, TN 38138

TEXAS - Legislation sought during the last session of the Texas Legislature passed only in the House of Representatives. The legislative efforts were through the cooperation of the Texas School Counselor Association, the Texas Personnel and Guidance Association, and the Texas State Teachers Association. The bill will probably be introduced during the next session in 1975.

A BILL ENTITLED AN ACT PROHIBITING THE GIVING OF EVIDENCE IN CRIMINAL ACTIONS OR PROCEEDINGS BY ANY COUNSELOR IN ANY ELEMENTARY OR SECONDARY PUBLIC SCHOOL OF A COMMUNICATION MADE TO THE COUNSELOR BY A STUDENT WHICH COMMUNICATION TENDS TO INCRIMINATE THE STUDENT: PROVIDING THAT A COUNSELOR IN ANY ELEMENTARY OR SECONDARY PUBLIC SCHOOL SHALL NOT BE REQUIRED TO DISCLOSE THE SOURCE AND CONTENT OF CERTAIN COMMUNICATIONS, DEFINING CERTAIN WORS, REPEALING OR MODIFYING ALL LAWS IN CONFLICT HEREWITH, AND DECLARING AN EMERGENCY.

SECTION 1. NO COUNSELOR IN ANY ELEMENTARY OR SECONDARY PUBLIC SCHOOL IN THIS STATE SHALL BE REQUIRED IN ANY CRIMINAL ACTION TO GIVE EVIDENCE CONCERNING A COMMUNICATION MADE TO THE COUNSELOR BY A STUDENT ENROLLED IN THE SCHOOL DISTRICT IN WHICH THE COUNSELOR IS EMPLOYED OR ASSIGNED IS SUCH COMMUNICATION TENDS TO INCRIMINATE THE STUDENT.

SECTION 2. A COUNSELOR IN ANY ELEMENTARY OR SECONDARY PUBLIC SCHOOL IN THIS STATE SHALL NOT BE REQUIRED IN ANY CRIMINAL OR CIVIL ACTION TO DISCLOSE THE SOURCE AND CONTENT OF A COMMUNICATION MADE IN CONFIDENCE TO THE COUNSELOR BY A STUDENT ENROLLED IN THE SCHOOL DISTRICT IN WHICH THE COUNSELOR IS EMPLOYED OR ASSIGNED....

Contact Person - Mr. Bob Keck, Assistant Dricetor Governmental Relations, Texas State Teachers Association, 316 West Twelfth Street, Austin, TX 78701

Also - D.G. Bahlinger, S.J., Chairman Texas School Counselor Association Legislation Committee, P.O. Box 36349 Houston, TX 77036

UTAH - There are no laws relating to privileged communications for school counselors, or other pupil personnel workers in Utah. A privileged communications bill was killed during the 1973 session of the legislature.

AN ACT AMMENDING SECTION 78-24-8, UTAH CODE ANNATATED 1953: PROVIDING FOR PROTECTION OF PRIVILEGED INFORMATION GIVEN TO CERTAIN SCHOOL PERSONNEL BY STUDENTS IN THE PUBLIC AND PRIVATE SCHOOLS AND OTHER EDUCATIONAL INSTITUTIONS OF THE STATE OF UTAH; AND PROVIDING FOR AN EFFECTIVE DATE.

78-24-8. THERE ARE PARTICULAR RELATIONS IN WHICH IT IS THE POLICY OF THE LAW TO ENCOURAGE CONDIDENCE AND TO PRESERVE IT INVIOLATE. THEREFORE, A PERSON CANNOT BE EXAMINED AS A WITNESS IN THE FOLLOWING CASSES:

....(6) ANY CERTIFICATED COUNSELOR, PSYCHOLOGIST OR SOCIAL WORKER, DULY APPOINTED, REGULARLY EMPLOYED AND DESIGNATED IN SUCH CAPACITY BY ANY PUBLIC OR PRIVATE SCHOOL OR OTHER EDUCATIONAL INSTITUTION IN THIS STATE, FOR THE PURPOSE OF COUNSELING STUDENTS, CANNOT WITHOUT THE CONSENT OF THE STUDENT, BE EXAMINED AS TO ANY COMMUNICATION MADE BY THE STUDENT TO HIM, OR HIS ADVICE GIVEN THEREIN IN THE COURSE OF HIS PROFESSIONAL COUNSELING WITH A STUDENT. IF THE CHILD IS UNDER THE AGE OF 14 THE CONSENT OF THE CHILD'S PARENTS OR GUARDIAN SHALL ALSO BE REQUIRED BEFORE THE CONDIDENTIAL COMMUNICATION CAN BE REVEALED.

Contact Person - Mrs. Jean Taylor, President-Elect
Utah Personnel and Guidance
Department of the Utah Education
Association, Jordan School District
9361 S. 400 East Sandy, UT 84070

VERMONT - (Did not respond to survey)

VIRGINIA - Virginia does not have a privileged communications Statute. A bill to provide for privileged communications was introduced in the Genreal Assembly of Virginia in 1970 but died in committee. The Virginia Education Association, in its 1974 Program Action statement, will recommend that the State Board of Education pursue legislation to protect all professional school personnel for privileged communication. There are no current plans for the introduction of a bill this year.

(1970 Bill) A BILL TO AMMEND THE CODE OF VIRGINIA BY ADDING A SECTION NUMBERED 8-289.3 MAKING COMMUNICATIONS BETWEEN COUNSELORS OF STUDENTS AND PERSONS THEY COUNSEL OR ADVISE PRIVILEGED.

S 8-289.3. NO COUNSELOR DULY APPOINTED OR DESIGNATED A COUNSELOR FOR AN EDUCATIONAL INSTITUTION USUALLY REFERRED TO AS A SCHOOL, COLLEGE OR UNIVERSITY BY ITS PROPER OFFICERS FOR THE PURPOSE OF COUNSELING PUPILS IN SUCH EDUCATIONAL INSTITUTION SHALL BE REQUIRED IN GIVING TESTIMONY AS A WITNESS IN ANY CIVIL ACTION TO DISCLOSE ANY INFORMATION WRITTEN OR UNWRITTEN COMMUNICATED TO HIM IN HIS PROFESSIONAL CAPACITY AND NECESSARY TO ENABLE HIM TO DISCHARGE THE FUNCTIONS OF HIS OFFICE ACCORDING TO THE USUAL COURSE OF HIS PRACTICE OR DISCIPLINE, WHEREIN SUCH PERSON SO COMMUNICATING SUCH INFORMATION ABOUT HIMSELF OR ANOTHER IS SEEKING EDUCATIONAL OR CAREER COUNSEL AND ADVICE RELATIVE TO AND GROWING OUT OF THE INFORMATION SO IMPARTED.

Contact Person - Miss Gertrude D. Lewis, Assistant
Supervisor of Guidance Services
Virginia State Board of Education
Box 600
Warrenton, VA 22186

Also -

Paul E. Behrens, Ed.D., Chairman
Legislative Committee, Virginia
Personnel and Guidance Association
8905 Wishart Road, Richmond, VA 23229

WASHINGTON - Communications between certificated school counselors and student drug and alcohol users were "guaranteed confidential" in 1971. Counselor certification apparently started after the below mentioned statute passed the legislature.

SECTION 9, CHAPTER 304, LAWS OF 1971. (in part)
69.54.070 CONFIDENTIALITY. WHEN AN INDIVIDUAL SUBMITS HIMSELF FOR CARE, TREATMENT, COUNSELING, OR REHABILITATION TO ANY ORGANIZATION, INSTITUTION OR CORPORATION, PUBLIC OR PRIVATE, APPROVED PURSUANT TO THIS 1971 AMENDATORY ACT, OR ANY PERSON LICENSED OR CERTIFIED BY THE STATE WHOSE PRINCIPAL FUNCTION IS THE CARE, TREATMENT, COUNSELING OR REHABILITATION OF ALCOHOL ABUSERS OR USERS OF NARCOTIC OR DANGEROUS DRUGS, OR THE PROVIDING OF MEDICAL, PSYCHOLOGICAL OR SOCIAL COUNSELING OR TREATMENT, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SUCH INDIVIDUAL IS HEREBY GUARANTEED CONFIDENTIALITY. NO SUCH PERSON, ORGANIZATION INSTITUTION OR CORPORATION OR THEIR AGENTS ACTING IN THE SCOPE AND COURSE OF THEIR DUTIES, PROVIDING SUCH CARE, TREATMENT, COUNSELING OR REHABILITATION SHALL DIVULGE NOR SHALL THEY BE REQUIRED TO PROVIDE ANY SPECIFIC INFORMATION CONCERNING INDIVIDUALS BEING CARED FOR, TREATED, COUNSELED OR REHABILITATED.

Contact Person - Marjorie M. Anderson, Supervisor of Pupil Personnel Services, Washington Department of Education, Old Capitol Bldg., Olympia, WA 98504

WEST VIRGINIA - The West Virginia Personnel and Guidance Association has for the past two years submitted legislation seeking to obtain privileged communications for school counselors in the state. Bothe years the bill was defeated, one year on the floor of the senate; the subsequent year in committee. The bill was submitted in January of this year, in the third attempt for passage through the legislature. Current status is not available at this printing.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.
SECTION 18A-5-8. PRIVILEGED COMMUNICATIONS.
CONVERSATIONS BETWEEN ANY SCHOOL COUNSELOR AND A PUPIL IN ANY ELEMENTARY OR SECONDARY SCHOOL, PUBLIC OR PRIVATE, CONDUCTED IN A PROFESSIONAL CAPACITY AND RECORDS PERTAINING TO SUCH CONVERSATIONS ARE PRIVILEGED AND AS SUCH MAY NOT BE DISCLOSED OR ASSERTED EXCEPT IN ANY ACTION BROUGHT BY THE PUPIL AGAINST SUCH COUNSELOR BASED UPON THE RELATIONSHIP OF THAT OFFICIAL IN HIS PROFESSIONAL CAPACITY WITH THE PUPIL.

THE PRIVILEGE IS WAIVED IN ANY INSTANCE WHERE LIFE IS ENDANGERED, WHERE THE PUPIL CONSENTS TO DISCLOSURE, WHERE HE MAKES THE DISCLOSURE HIMSELF IN ANY CIVIL OR CRIMINAL ACTION OR WHERE HE DISCLOSES THE SUBSTANCE OF SUCH COMMUNICATION OR RECORD TO ANY THIRD PARTY OTHER THAN HIS PARENT, GUARDIAN OR PROFESSIONAL PERSON TO WHICH A PRIVILEGE ATTACHES.

THE PRIVILEGE SPECIFIED IN THIS SECTION DOES NOT ATTACH TO RECORDS OR PORTIONS OF RECORDS WHICH RELATE ONLY TO THE ACADEMIC ACCOMPLISHMENTS OF THE PUPIL.

THE TERM "SCHOOL COUNSELOR" AS USED IN THIS SECTION MEANS ANY PROFESSIONAL EDUCATOR CERTIFIED BY THE STATE DEPARTMENT OF EDUCATION AS A COUNSELOR AND FUNCTIONING AS SUCH COUNSELOR.

Contact Person - Dr. Keith C. Smith, Director Guidance Services, West Virginia Department of Education, Charleston, West VA. 25305

Also -

Miss Billie Davis, Chairperson
Legislation Action Committee
West Virginia Personnel and Guidance Association, Dunbar Junior High Sch.
Dunbar, West VA.

WISCONSIN - An attempt to achieve passage of an ammendment to existing privileged communications laws failed to pass the Wisconsin Assembly during the past session. The existing law provides for a limited communications privilege for deans at institutions of higher learning and school psychologists at any school. The ammendment would have added school counselors to the law. There are no current moves to revive the legislative efforts for school counselors.

(Proposed ammendment)

885.205 PRIVILEGED COMMUNICATIONS. (1) NO DEAN OF MEN, DEAN OF WOMEN, DEAN OF STUDENTS OR SCHOOL COUNSELOR CERTIFIED BY THE DEPARTMENT OF EDUCATION IN THIS STATE, OR ANY SCHOOL COUNSELOR CERTIFIED BY THE DEPARTMENT OF PUBLIC INSTRUCTION AS A SCHOOL COUNSELOR AT ANY SCHOOL IN THIS STATE, OR ANY SCHOOL PSYCHOLOGIST OR SCHOOL SOCIAL WORKER OR OTHER PERSON DESIGNATED BY THE SCHOOL BOARD TO PROVIDE C OUNSELING AT ANY SCHOOL IN THIS STATE, SHALL BE ALLOWED TO DISCLOSE COMMUNICATIONS MADE TO HIM OR ADVICE GIVEN BY HIM IN THE COURSE OF COUNSELING A STUDENT, OR IN THE COURSE OF INVESTIGATING THE CONDUCT OF A STUDENT ENROLLED AT SUCH UNIVERSITY OR SCHOOL, EXCEPT:

(a) THIS PROHIBITION MAYBE WAIVED BY THE STUDENT.
(b) THIS PROHIBITION DOES NOT INCLUDE COMMUNICATIONS WHICH SUCH DEAN, COUNSELOR, PSYCHOLOGIST, SOCIAL WORKER OR OTHER DESIGNATED PERSON NEEDS TO DIVULGE FOR HIS OWN PROTECTION, OR THE PROTECTION OF THOSE WITH WHOM HE DEALS, OR WHICH WERE MADE TO HIM FOR THE EXPRESS PURPOSE OF BEING COMMUNICATED TO ANOTHER, OR OF BEING MADE PUBLIC.
(c) THIS PROHIBITION DOES NOT EXTEND TO A CRIMINAL CASE WHEN SUCH DEAN, COUNSELOR, PSYCHOLOGIST, SOCIAL WORKER OR OTHER DESIGNATED PERSON HAS BEEN REGULARLY SUBPOENAED TO TESTIFY.
(2) IN THIS SECTION"COUNSELOR" OR "SCHOOL COUNSELOR" MEANS A PERSON WHO IS PROFESSIONALLY TRAINED IN COUNSELING OR PSYCHOLOGY, WHO IS RESPONSIBLE TO A DEAN OF STUDENTS, VICE PRESIDENT FOR STUDENT AFFAIRS, PRINCIPAL OR SIMILAR OFFICER AND IS DESIGNATED BY HIM TO FUNCTION AS A COUNSELOR AND WHO DOES NOT FUNCTION IN AN AUTHORITARIAN, DISCIPLINARY OR ADMINISTRATIVE ROLE IN RELATION TO STUDENTS.

Contact Person - Mr. William J. Erpenbach, Consultant Counseling and Guidance, Wisconsin Department of Public Instruction, 126 Langdon St., Madison, WI 53702

WYOMING - Wyoming does not have any law which provides a communication privilege between students and their guidance personnel. Limited privilege communications exists pertaining to school records (only a student, his parents, and his school officials can look at a student's records).

Wyoming has no legislative bills now pending with regard to this type of communications privilege, (between student and counselor) nor has it had bills in the past that have been killed for lack of support.

Contact Person - Jim Anderson, Coordinator Career Guidance and Secondary Counseling
Wyoming Department of Education
Cheyenne, WY 82002

Also -

Barbara A. Erickson, Law Clerk
State Department of Education
Cheyenne, WY 82002

A PROPOSED MODEL PRIVILEGED COMMUNICATIONS LAW developed by the ASCA Political Action Committee for the American Personnel and Guidance Association. The Committee developed three model bills, model 1 and 2 are written from the point of view of protecting the student while model 3 is written more for the counselor.

The PROPOSED MODELS are yet to be approved and are only presented here for the benefit of the reader. More complete information should be obtained from the committee chairperson.

MODEL LAW #1 AN ACT

Relating to the confidential relationship of the students of (state) and the endorsed counselors of public, private or parochial schools.

(Preamble) if needed.

(Enacting Clause) as needed by the state.

(Short Title) This act may be cited as the Act of_____.

(Policy Section) if needed.

(Definitions) Each state's school laws have their own definitions which are necessary, i.e. certified, licensed, certificated or endorsed counselor.

Be it enacted that:

All students enrolled in a school system shall be protected from disclosure in any action, suit, or proceeding of communications given in confidence to a person certified by the State Department of Education as a school counselor and duly appointed or designated a school counselor for the school system by its proper officers. However, this section shall not apply where the student waives the privilege conferred.

NOTES:
1. The statement "communications in confidence" is conceived to include one or more counselors working with several students in group counseling as well as individual counseling.
2. The term "enrolled" would include students previously enrolled or students planning such enrollement with whom a counseling relationship has been established.

MODEL LAW #2 AN ACT

(see section in MODEL LAW #1, "AN ACT")

Be it enacted that:

Students shall be protected form disclosure of communications given to a person certified by the State Department of Education as a school counselor and duly appointed or designated a school counselor for the school system by its proper officers, for the purpose of counseling students enrolled in such school system. This school counselor shall not be competent to testify in any action, suit, or proceeding concerning information acquired in rendering counseling services. Such communications must originate in confidence and do not include thsoe made in the presence of third parties not covered by the statute. However, this section shall not apply where the student in open court waives the privilege conferred or if the communication concerns future crimes.

NOTES:
1. "Counseling services" shall include individual, co-counselor, and group counseling situations.
2. The term "enrolled" would include students previously enrolled or students planning such enrollment with whom a counseling relationship has been established.

MODEL LAW #3 AN ACT

(see section in MODEL LAW #1 "AN ACT")

Be it enacted that:

No person certified by the State Department of Education as a school counselor and duly appointed or designated a school counselor for the school system by its proper officers, for the purpose of counseling students enrolled in such school system, shall not be competent to testify in any action, suit, or proceeding concerning information acquired in rendering counseling services. Such communications must originate in confidence and do not include those made in the presence of thrid parties not covered by the statute. However, this section shall not apply where the student in open court waives the privilege conferred or in the communication concerns future crimes.

NOTES:
1. "Counseling services" shall include individual, co-counselor, and group counseling situations.
2. The term "enrolled" would include students previously enrolled or students planning such enrollment with whom a c ounseling relationship has been established.

The above draft models were put together for APGA Committee examination, previous to any approval of a MODEL LAW. Information may be requested from Ms. Mardelle Parkinson, Chairperson, ASCA Political Action Committee, Arbor Heights Junior High School, 8601 Arbor, Omaha, NB 68124

SOURCES FOR FURTHER INFORMATION

Doctoral Students Who Have Been In Contact With The Committee.

Mr. John Eisele, 3904 N.W. 13th Street, Gainesville, FL 32601
Research is in the area of ethical-conflict situations, especially as it relates to confidential information.

Miss Margaret E. Ferqueron, 781 El Rancho Street, Tallahassee, FL 32304
Research includes information from questionnaires about the needs for privileged information in the states. Examples of court cases are asked for.

J. Kent Larkin, P.O. Box 7275, University Station, Provo, UT 84602
A member of a State of Utah task force researching counselor legislation pertaining to confidentiality and privileged communications.

Published Materials:

Counselor Certification 1971; Jack Thorsen, Ph.D. American Personnel and Guidance Association, Washington, D.C. 20009 (has notes of privileged communications).

Ethics in Counseling-Problem Situations; Harley D. Christiansen, University of Arizona Press, Tucson, AZ 85721

Legal Aspects of Student Records; Henry E. Butler, Jr., K.D. Moran, Floyd A. Vanderpool, Jr., NOLPE, 825 Western Avenue, Topeka, KS 66606.

Future Developments of the Law of Guidance Counseling; Jacob C. Diemert, Esq., Massachusetts School Counselors Association, 22 Constitution Road, Lexington, MA 02173

Bibliography on the Ethical Responsibilities and Legal Status of Counselors;
American Personnel and Guidance Association, Professional Information Specialist, Washington, D.C. 20009